

# Paul Plevin & Sullivan LLP

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Developments

## EMPLOYERS WIN RIGHT TO RESCIND PROMISES OF JOB SECURITY (June 15, 2000)

### Summary

In a sharply divided opinion, the California Supreme Court in [Asmus v. Pacific Bell](#) recently upheld an employer's decision to unilaterally withdraw a "management employee security policy." The Court held that a guarantee of job security contained in a company policy could be rescinded *even if the specific condition required by the policy's own terms for its termination is not met*. The Court concluded that an employer may terminate or modify such a policy without providing any additional consideration to the employees if this change is made within a "reasonable time" after the policy is in place. The Court did note that the employer would be required to provide employees with reasonable notice of the change and ensure that there is no forfeiture of employees' vested benefits.

### Details

In 1986, Pacific Bell adopted a management employee security policy (MESP). The policy provided that in the event of workforce restructuring, managers meeting job expectations would be retrained and reassigned to other management positions even if their present jobs were eliminated. The policy stated that it would be maintained so long as there is "no change that would materially alter Pacific Bell's business plan achievement."

In 1992, Pacific Bell rescinded the job security policy, claiming economic changes and the need for greater flexibility to allow it to more effectively compete in the marketplace. The plaintiffs, 60 former Pacific Bell management employees who chose to remain with the company for several years after the termination of the MESP, challenged the company's right to rescind the policy, claiming that the stated condition for its withdrawal had not occurred.

The California Supreme Court ruled against the employees and declared that the policy's own limitation on when it could be terminated did not restrict Pacific Bell's ability to rescind or modify it for other reasons. Accordingly, the company was not bound by its express promise of job security as long as it terminated the policy after a reasonable time, with reasonable notice, and in a manner that did not interfere with employees' vested benefits.

### What this Means

This case has the potential for being a landmark decision in the area of implied contracts and at-will employment. Many employers have only recently implemented at-will employment. Employees hired before these at-will policies were adopted often claim that they are not employed at-will because the policy did not exist at the time they were hired. Currently, there is no California case directly on this point. Interpreted broadly, the *Asmus* case arguably permits an employer to simply issue a policy converting all employees to at-will employment without providing any new consideration.

In determining whether to modify or withdraw an existing job security policy, employers must ensure that:

1. The change is made after a reasonable time. In other words, the policy cannot be in force for such a short duration as to render the promise of job security illusory;
2. The change is made after reasonable notice so as to afford employees the opportunity to seek alternative employment if they reject the termination of or change in policy; and
3. It does not interfere with the employees' vested benefits.

As to at-will employment, it is still best to obtain written agreements with employees specifying that their employment is at-will. This is because California courts will not always enforce an at-will personnel policy unless there is also a written agreement. Obtaining such an agreement can be done in an offer letter or other employment document (e.g., a memo confirming a promotion or pay raise that also contains at-will employment language and is signed by the employee). In determining whether to modify or eliminate job security policy, or whether to institute at-will employment where it was not previously established, employers should consult with counsel to discuss the potential implications.

If you would like further information, please feel free to call or e-mail [Fred Plevin](#) at (619) 744-3650, or any of our other attorneys at (619) 237-5200.

#### **Seminar Announcement:**

[Successful Separations: Involuntary and Mutual Agreement Separations](#). This seminar will be held on Tuesday, June 20, 11:30 a.m.-2 p.m. at the Marriott Hotel in La Jolla. This seminar will be presented by Drake Beam Morin, with a special legal briefing by Fred M. Plevin of Paul Plevin & Sullivan LLP. The highlights of this lunch session include:

- Conducting the notification
- Minimum legal requirements for an enforceable release of claims & when to ask for them
- Complying with the Older Worker Benefit Protection Act
- Can you include an agreement not to compete?
- Common separation practices in San Diego
- Mutual Agreement Separations
- Reducing potential for violence or workplace anger

Seminar cost is \$25, including lunch and materials. Payment can be made in advance or at the door and can be made by check or cash. Please RSVP by one of the following methods:

Phone: (858) 597-4721 or Email: [jennifer\\_travaglini@dbm.com](mailto:jennifer_travaglini@dbm.com)

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